

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

A National Broadband Plan for Our Future

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GN Docket No. 09-51; FCC 09-32

To: The Commission

**REPLY COMMENTS OF THE
NATIVE AMERICAN BROADBAND ASSOCIATION
AND THE DELAWARE NATION**

The Native American Broadband Association (“NABA”) and the Delaware Nation hereby submit these Reply Comments to discuss issues of extreme importance to Native Americans that the Commission should consider as it develops its national broadband plan. In particular, we urge the following:

- The Commission should publicly reaffirm its commitment to work with the Tribes on a government-to-government basis in developing the national broadband plan and, in so doing, should expand the FCC’s Indian Telecommunications Initiatives (“ITI”) program to a permanent tribal liaison office that will work on a government-to-government basis to provide the best broadband services to Native people and gather reliable data on broadband usage;
- The Commission should include in its national broadband plan specific objectives and milestones for improving access and adoption of broadband on Tribal lands;
- In its consultative role under the Recovery Act, the Commission should recommend that Tribes be given the same opportunities to qualify for funding under programs established pursuant to the Recovery Act as are the States; and
- The Commission should set forth a separate Native American Broadband Plan as part of its obligation under the Recovery Act. This separate plan is needed to address the issues involved with dealing with Tribal governments and the unique telecommunications needs of Tribes.

I. INTRODUCTION

NABA is a newly constituted organization established by Native Americans to help educate Native Americans about broadband and increase broadband accessibility and adoption on Tribal lands. In advancing these objectives, NABA will be participating in FCC proceedings to give voice to Native American interests.

The Delaware Nation is a federally recognized Indian tribe located outside Anadarko, Oklahoma. The tribe made the first treaty with the new U.S. Government in 1778 and made more treaties with the U.S. Government than any other tribe and had more treaties broken. The area where the tribe is located qualifies as a rural area under the recent NTIA/RUS Broadband NOFA.

It is important to note that, historically, the interests of Native Americans have not been well represented in telecommunications legislation. We are pleased that the Commission, through former Acting Chairman Michael J. Copps, recently indicated a willingness and desire to coordinate with Tribes.¹ In the *Rural Broadband Report*, Acting Chairman Copps acknowledged that the Commission “lack[s] data describing availability or subscribership” to broadband, but noted that Native Americans “have a broadband subscription rate of only 30 percent, by far the lowest subscription rate among any ethnic group identified” and that the “situation is likely to be even worse in rural areas.”² To help address this problem, Acting Chairman Copps made two specific recommendations to increase the level of coordination between federal agencies and Tribes:

(1) Federal agencies should consider how to maximize existing programs to improve coordination with Tribal governments; and

(2) The Commission should consult with Tribal governments pursuant to its Tribal Policy Statement in developing its national broadband plan and, in

¹ “Bringing Broadband to Rural America: Report on a Rural Broadband Strategy,” May 22, 2009 (“*Rural Broadband Report*”).

² *Id.* at ¶30 (footnotes omitted).

particular, in developing the aspects of that plan that affect broadband deployment and subscribership specifically on Tribal lands.³

NABA and the Delaware Nation share the view that the *Rural Broadband Report* should be a “building block” for a national broadband plan that includes the specific needs of Tribes.⁴

Somewhat troubling, however, is the lack of any recognition of the rights of Tribes to be a part of the mapping process described in the Broadband Data Improvement Act (“BDIA”)⁵ and the Notice of Funds Availability for the Department of Commerce’s State Broadband Data and Development Program (“Mapping NOFA”) issued pursuant to the Recovery Act.⁶ Rather, only states, agencies and instrumentalities of states and 501(c)(3) nonprofit organizations are eligible to receive portions of the \$350 million set aside for mapping and data collection. These grant recipients “must agree to provide NTIA with broadband data, ... from all commercial or public providers of broadband service in their respective states, including, but not limited to, commercial or public providers of broadband service to Indian tribes.”⁷ Obviously – and this is not the FCC’s problem *per se* – having the grant recipient, usually a state agency, try to come on Tribal land to gather broadband data is the not the optimal way to collect the best data. We believe that funds should be set aside to educate the Tribes about the importance of participating in the data collection process and also to help coordinate the activities of the grant recipients and Tribes so that reliable data is obtained for Tribal lands.

II. DISCUSSION

We have four specific recommendations for the Commission as it develops its national broadband plan. These are discussed below.

³ *Id.* at ¶13.

⁴ *Id.* at ¶8.

⁵ Broadband Data Improvement Act, Pub. Law No. 11-385, 122 Stat. 4096 (2008).

⁶ State Broadband Data and Development Grant Program, RIN 0660-ZA29 (“Mapping NOFA”).

⁷ *Id.* at 21.

A. The Commission should publicly reaffirm its commitment to work with the Tribes on a government-to-government basis in developing the national broadband plan and, in so doing, should expand the FCC's ITI program to a permanent tribal liaison office that will work on a government-to-government basis to provide the best broadband services to Native people.

As a necessary part of its mandate to develop a national broadband plan, the Commission should reaffirm its commitment to communicate with and coordinate with Tribal governments. The Commission's *Indian Policy Statement* was adopted in 2000 and contains many broad aspirational statements about the Commission's relationship with Tribes.⁸ While well-intentioned, the Indian Policy Statement does not set aside specific resources or establish specific targets for accessibility and adoption of communications resources. Given the tremendous change in technology, the expansion of broadband services and emerging data showing that Native Americans have the lowest adoption rate for broadband, the Commission should re-examine its Indian Policy Statement in the context of this proceeding, and determine whether more specific broadband objectives are in order.

In addition, the ITI program should be expanded and staffed to enable more formal and adequate inter-governmental coordination. Holding annual conferences, such as the conference scheduled for later this month, are useful, but so far this outreach has had little impact on Tribes – broadband accessibility and adoption have continued to suffer. As it develops its national broadband plan, the Commission should expand the role of the ITI program, increase staffing, consult on a more formal basis with Tribes and tribal associations such as NCAI and NABA and, in general, treat the Tribes as necessary and integral parts of the broadband policy-making process.

⁸ See Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, FCC 00-207, rel. June 23, 2000 ("*Indian Policy Statement*").

B. The Commission should include in its national broadband plan specific objectives and milestones for improving access and adoption of broadband on Tribal lands.

The national broadband plan should establish goals, objectives and milestones that apply specifically to Tribal lands. Including Tribal areas as just another part of the United States for purposes of the plan will disserve the country and likely perpetuate the lack of accessibility and adoption in those areas. In establishing explicit benchmarks, organizational, human and financial resources should be earmarked for improving broadband access and adoption on Tribal lands. Anything less would diminish the recognized problem and ensure that Tribes will continue to be left behind.

The Commission also should consider other policy changes. Few winning bidders at Commission auctions have taken advantage of the Tribal Land Bidding Credit, which suggests that this program is not achieving its goals. This is likely true because the program is limited to Tribal lands that do not meet a threshold for telephone service penetration, rather than broadband penetration. In developing the national broadband plan, the Commission should expand the role of the ITI program, staff a liaison office, consider changes to the Tribal Lands Bidding Credit program and encourage others to fund specific programs for tribes that will provide additional incentives for auction winners and others to deploy broadband services on Tribal lands.

C. In its consultative role under the Recovery Act, the Commission should recommend that Tribes be given the same opportunities to qualify for funding under programs established pursuant to the Recovery Act.

In addition to effectuating positive change through its own policies, the Commission has an obligation under the Recovery Act to consult with NTIA and RUS during the funding process. Especially in light of some of the shortcomings in the BDIA and the Mapping NOFA, the Commission should represent the interests of Native Americans as it performs its consulting

functions. For example the Commission should work with NTIA to set up a program to inform tribes of the importance of providing broadband information for the mapping process. To this end, NABA would be available to meet with the Commission to answer specific questions and assist in ways that broadband opportunities would be meaningful and appropriate.

D. The Commission should set forth a separate Native American Broadband Plan as part of its obligation under the Recovery Act. This separate plan is needed to address the issues involved with dealing with tribal governments and the unique telecommunications needs of Tribes and Tribal governments.

Tribes are organized in a variety of different manners and with varying degrees of supervision from the U.S. Government, particularly, the BIA. As the Commission's own statistics have shown, many Tribes have some of the lowest per capita use of telecommunications services. At the same time, many Tribes have seen a flowering of Tribal business enterprises on their own land and now operate, or are building, sophisticated hospitals, utility systems and schools. Forty-four Tribes are located along U.S. borders and so Homeland Security issues are handled by panoply of Tribal police, Homeland Security agencies and military branches. Tribes also were often pushed to the least desirable lands and thus are in widely disparate and often extreme terrains.

As a result, Indian Country today is widely diverse economically, geographically, structurally and in its policing needs, but the one thing they all have in common is that they are sovereign nations with individual treaty rights. This principle is supported by 200 years of legal precedent and must be addressed in the national broadband plan. Tribal governments also have a responsibility to their citizens to make sure that developments on Tribal lands serve all of the Tribal members both now and in the future. For the national broadband plan to succeed where private enterprise and other government programs have failed, it must recognize this unique

aspect of dealing with Tribes and set forward a process for coordinating broadband roll-out for the benefit of the Tribe and the nation.

III. CONCLUSION

NABA and the Delaware Nation are pleased to participate in this proceeding and to make recommendations on how the needs of Native Americans can be addressed through a national broadband plan that promotes better coordination, improved policies, enhanced accessibility and increased adoption.

Respectfully submitted,

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